

**Description of S. 100 (Relating to Reforestation Ex-
penses) and S. 394 (Relating to Certain Artists and
Authors as Employees)**

SCHEDULED FOR A HEARING

BY THE

SUBCOMMITTEE ON TAXATION AND DEBT
MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE

ON MAY 18, 1979

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION



MAY 17, 1979

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1979

JCS-16-79

2

3

4

5

6

8

9

10

11

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WATER RIGHTS

1917

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

WATER RIGHTS

1917

WATER RIGHTS

1917

WATER RIGHTS

1917

WATER RIGHTS

1917



BUREAU OF LAND MANAGEMENT

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

CONTENTS

	Page
Introduction.....	1
I. Summary of Bills.....	3
II. S. 100—Deduction for Reforestation Expenditures and Reforestation Trust Fund.....	4
A. Present law and issue.....	4
B. Description of the bill.....	5
III. S. 394—Treatment of Authors and Artists as Em- ployees for Certain Purposes Under the Code.....	7
A. Present law and issue.....	7
B. Description of the bill.....	9

2

3

4

5

6

7

8

9

10

MEMORANDUM

TO :

FROM :

SUBJECT :

DATE :

1. The purpose of this memorandum is to provide information regarding the proposed changes to the existing policy on [illegible].

2. It is recommended that the proposed changes be approved by the [illegible] Committee.

3. The proposed changes will be implemented on [illegible].

4. The proposed changes will be implemented on [illegible].

5. The proposed changes will be implemented on [illegible].

6. The proposed changes will be implemented on [illegible].

7. The proposed changes will be implemented on [illegible].

8. The proposed changes will be implemented on [illegible].

9. The proposed changes will be implemented on [illegible].

10. The proposed changes will be implemented on [illegible].

INTRODUCTION

The bills discussed in this pamphlet, S. 100 and S. 394, have been scheduled for a hearing on May 18, 1979, by the Subcommittee on Taxation and Debt Management Generally of the Senate Finance Committee. S. 100 (introduced by Senator Packwood) relates to the tax treatment of certain reforestation expenses and S. 394 (introduced by Senators Moynihan and Javits) relates to the treatment of certain authors and artists performing services under contract for a corporation as employees for purposes of certain provisions of the Code.

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a description of the bills. The description indicates present law, an explanation of the provisions of the bills, the effective dates, and the estimated revenue effects.

(1)

CHAPTER I

The first part of the book is devoted to a general survey of the history of the subject. It begins with a discussion of the early stages of the development of the subject, and then proceeds to a more detailed examination of the various theories and methods which have been proposed and used in the study of the subject. The author's own views are stated in a clear and concise manner, and are supported by a wealth of references to the literature of the subject.

The second part of the book is devoted to a detailed examination of the various theories and methods which have been proposed and used in the study of the subject. The author's own views are stated in a clear and concise manner, and are supported by a wealth of references to the literature of the subject.

I. SUMMARY OF BILLS

S. 100

Senator Packwood¹

Present law requires the capitalization of direct expenditures for seeding and replanting timberlands and these reforestation costs are not recovered until the timber is harvested. The bill would allow taxpayers an election, effective for taxable years ending after December 31, 1979, to deduct up to \$10,000 of reforestation expenditures each year. In addition, the bill would dedicate up to \$30 million per year of tariffs on imported plywood and lumber to a Reforestation Trust Fund for the purpose of providing supplemental funds for the reforestation of publicly owned national forests. The trust fund would be effective for the period from October 1, 1978, through September 30, 1985.

S. 394

Senators Moynihan and Javits

The bill would treat certain authors and artists, performing services under contract for a corporation, as employees of the corporation, for purposes of sections 79 (relating to group-term life insurance purchased for employees), 101(b) (relating to employees' death benefits), 104 (relating to compensation for injuries and sickness), 105 (relating to amounts received under accident and health plans), and 106 (relating to contributions by employer to accident and health plans) of the Code and for purposes of the provisions relating to contributions to, and distributions from, certain stock bonus, pension, profit-sharing, or annuity plans. In order to qualify for this treatment, the author or artist would be required to elect to be considered as an employee of the corporation for the purposes of chapters 21 (Federal Insurance Contributions Act) and 24 (collection of income tax at source on wages) of the Code.

¹ Cosponsored by Senators Armstrong, Baucus, Boren, Boschwitz, Cannon, Chafee, Church, Cranston, Danforth, Dole, Domenici, Durenberger, Garn, Gravel, Hart, Hatch, Hayakawa, Heinz, Jackson, Laxalt, Lugar, McClure, Melcher, Moynihan, Nelson, Schmitt, Simpson, Stevens, Talmadge, Tower, and Wallop.

II. S. 100

DEDUCTION FOR REFORESTATION EXPENDITURES AND REFORESTATION TRUST FUND

A. Present Law and Issue

Present law

Reforestation expenses generally

Under present law, direct costs incurred in connection with reforestation of timberlands are treated as capital expenditures. (Treas Regs. § 1.611-3(a).) Reforestation costs for this purpose are those for site preparation (including girdling, herbicide applications, baiting of rodents and bush removal), seed or seedling, plus labor and tool expenses incident to planting or seedling. Depreciation on tractors, trucks and other equipment used in these activities must also be capitalized as a reforestation cost.¹

These capitalized reforestation costs may not be depreciated but are recovered through a depletion deduction when the timber is harvested fifteen or more years later.

Cost sharing payments

If a private owner of timberland receives funds from the Federal Government or State government under certain reforestation cost sharing programs, these funds are not included in income. In addition, the private owner of timberlands does not receive any depletion, depreciation or other deduction for his reforestation costs paid with these cost-sharing funds, and the owner's basis in the property does not reflect the amount of these payments.² These rules apply for grants made after September 30, 1979.

Where additional costs are incurred for clearing brush and unwanted trees after the planting or seeding of timberlands, these costs are currently deductible because they are in the nature of maintenance charges.³

¹ Rev. Rul. 75-467, 1975-2 Cum. Bull. 93.

² These rules, found in sections 126 and 1255 of the Code, were enacted under section 543 of the Revenue Act of 1978 (Public Law 95-600).

³ Rev. Rul. 66-18, 1966-1 Cum Bull. 59, indicates that such expenses are currently deductible. (This ruling was modified by Rev. Rul. 71-22S, 1971-1 Cum. Bull. 53, to indicate that costs of annual shearing of Christmas trees are also currently deductible. This ruling also follows the decision in *Daniel D. Kinley*, 51 T.C. 1002 (1969), *aff'd per curiam*, 70-2 USTC ¶9462 (2d Cir. 1970), acq. 1971-2 Cum. Bull. 3.) See also, *Ransburg v. United States*, 281 F. Supp 324 (S.D. Ind 1967) current deduction for weed, brush and insect control expenses conceded by United States; the court also allowed a current deduction of expenses of annual shearing of Christmas trees).

Import duties on lumber and plywood

Under present law, revenues from import duties on lumber and plywood are deposited in the general funds of the U.S. Treasury and are not dedicated for any particular purpose.

Issues

The issues are whether reforestation costs should be currently deductible rather than capitalized, and whether import duties on lumber and plywood should be dedicated for reforestation purposes.

B. Description of the Bill

Explanation of provisions

Tax deduction for reforestation expenditures

The bill would provide taxpayers an election to deduct currently up to \$10,000 of reforestation expenditures each taxable year. The deduction would be available to both individual and corporate taxpayers and is intended to be an "above the line" deduction for individuals, that is a deduction in computing adjusted gross income under Code section 62. Reforestation expenditures are defined as direct costs for seeding or planting and costs for timber stand maintenance. Direct costs for this purpose are defined to include those for site preparation, seeds or seedlings, and for related labor and tools, including depreciation on tractors, trucks and other equipment.

No deduction would be permitted under these provisions for reforestation costs for which the taxpayer is reimbursed under Federal reforestation and timber stock improvement cost sharing programs, since such reimbursements are excluded from income under Code section 126.

Reforestation trust fund

The bill would also establish a trust fund, the proceeds of which would be used to supplement congressional appropriations for reforestation and timber stock improvement on publicly owned national forests. Funding for this trust fund would come from import duties on plywood and lumber, which would be appropriated to the trust fund in a maximum amount of \$30 million each year for a seven-year period from October 1, 1978, through September 30, 1985.

Proceeds of the trust fund could be used by the Secretary of Agriculture, in amounts up to \$30 million per year, to meet obligations incurred in eliminating and preventing a backlog in reforestation of the National Forest System, including administrative costs of such programs. However, trust fund proceeds could be used only to the extent that these obligations exceed amounts appropriated from general funds for these purposes.

The Secretary of the Treasury would be authorized to invest trust fund proceeds, in excess of amounts needed for current withdrawals, in interest-bearing obligations of the United States or guaranteed by the United States. At the termination of the trust fund on September 30, 1985, unexpended amounts, including interest earned on invested proceeds, would be returned to the general fund of the Treasury.

Effective date

The current deduction (expensing) of certain reforestation expenditures would apply to taxable years beginning after December 31, 1979. The trust fund provisions would apply for the period from October 1, 1978, through September 30, 1985.

Revenue effect

The bill is estimated to reduce budget receipts by \$8 million for each fiscal year from 1980 through 1984. The trust fund provision of the bill would transfer up to \$30 million per year from the General Fund for fiscal years 1979-1985.

III. S. 394

TREATMENT OF AUTHORS AND ARTISTS AS EMPLOYEES FOR CERTAIN PURPOSES OF THE CODE

A. Present Law and Issue

Present law

Under present law, authors and artists and other individuals who are not considered to be employees are not entitled to the benefits of section 79, 101 (b), 104, 105, or 106 of the Code, nor are they entitled to participate in employer-sponsored pension, profit-sharing, stock bonus, or annuity plans.

Group-term life insurance exclusion

Section 79 generally excludes from the gross income of an employee the cost of up to \$50,000 of employer-provided group-term life insurance.

Death benefit exclusion

Under section 101 (b), gross income does not include amounts of up to \$5,000 received by the beneficiaries or by the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

Exclusion for compensation for injuries or sickness

Section 104 provides, in pertinent part, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness, or amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee that are attributable to contributions by the employer which were not includible in the gross income of the employee, or amounts that are paid by the employer).

Amounts received under accident and health plans

General.—Under section 105, amounts received by an employee through accident or health insurance for personal injuries or sickness generally are includible in gross income to the extent such amounts are attributable to contributions by the employer, which were not includible in the gross income of the employee, or are paid by the employer. However, such amounts are not generally includible in gross income if they are paid to an employee as reimbursement for expenses incurred for the medical care of the employee, or the employee's spouse or dependents. In addition, gross income does not include amounts received by an employee through accident or health insurance to the extent such amounts constitute payment for the permanent loss of use of a member or function of the body or for the permanent disfigurement of employee, spouse, or a dependent, and are computed without regard to the period the employee is absent from work.

Certain disability payments.—Under section 105(d), amounts received by an employee through employer-provided accident or health insurance for personal injuries or sickness are not includible in gross income if the taxpayer has not attained age 65 before the close of the taxable year, has retired on disability and, upon retirement, was permanently and totally disabled. In addition, such amounts must constitute wages or payments in lieu of wages for a period during which the employee is absent from work on account of permanent and total disability. The maximum exclusion provided by section 105(d) is \$100 per week (for a maximum of \$5,200 annually). If the taxpayer's adjusted gross income for the taxable year (determined without regard to section 105(d)) exceeds \$15,000, the amount excludable is reduced on a dollar-for-dollar basis by an amount equal to the excess of adjusted gross income over \$15,000. Thus, the exclusion is phased-out entirely for adjusted gross income of \$20,200 and above. In order to take advantage of the section 105(d) exclusion, a married couple must file a joint return.

Self-insured medical reimbursement plans.—Under section 105(h), self-insured medical reimbursement plans are subject to rules regarding discrimination as to eligibility and benefits in favor of employees who are officers, shareholders, or highly compensated. Reimbursements to an officer, etc., under a discriminatory plan are wholly or partly includible in income.

Employer contributions to accident and health plans

Section 106 provides that gross income does not include contributions by an employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.

Employer contributions to pension, etc. plans

Employer contributions to qualified pension and other plans generally are deductible by the employer and generally are not taxed as income to the employee until the plan benefits are paid. In addition, the tax on the investment income of the pension plan is generally deferred until the benefits are paid. Also, estate and gift tax exclusions are provided. There are similar tax provisions relating to self-employed individuals (Keogh plans), employees of schools and tax-exempt organizations (tax-sheltered annuities), and individuals not covered by qualified plans or annuities (individual retirement accounts and annuities).

Employment taxes and withholding

Wages paid to employees generally are subject to social security taxes imposed on the employer and the employee under the Federal Insurance Contributions Act (FICA) and unemployment taxes imposed on the employer under the Federal Unemployment Tax Act (FUTA). In addition, Federal income tax must be withheld from wages paid to employees. On the other hand, compensation paid to self-employed individuals is subject to the tax on self-employment income (SECA) and is not subject to FUTA tax nor to withholding.

The present FICA tax rate, for both an employer and employee, is 6.13 percent of the first \$22,900 of wages. In 1980, the rate will remain

the same but the wage base will increase to \$25,900. In 1981, the rate will be 6.65 percent of the first \$29,700 of wages.

The present SECA tax, payable by a self-employed individual, is 8.10 percent of the first \$22,900 of self-employment earnings. In 1980, the rate will remain the same but the earnings' base will increase to \$25,900. In 1981, the rate will be 9.30 percent of the first \$29,700 of self-employment earnings.

The FUTA tax is levied on covered employers at a current rate of 3.4 percent on wages of up to \$6,000 a year paid to employees. Credits against Federal FUTA liability are allowed for certain State unemployment compensation taxes.

Issue

The issue is whether certain authors and artists should be allowed to elect to be considered as employees of a corporation for purposes of FICA and Federal income tax withholding and, therefore, receive the benefits of Code sections 79 (with respect to group-term life insurance purchased for employees), 101(b) (with respect to employees' death benefits), and 104, 105, and 106 (with respect to accident and health insurance plans); and be treated as employees for purposes of the provisions relating to contributions to, and distributions from, certain pension, profit-sharing, stock bonus, or annuity plans.

B. Description of the Bill

Explanation of provisions

The bill would allow an author or artist performing services under contract with a corporation to be considered as an employee of the corporation for purposes of sections 79, 101(b), 104, 105, and 106 of the Code, and for purposes of the provisions relating to qualified pension, profit-sharing, stock bonus, and annuity plans; provided certain requirements are met. The author or artist must have been a participant in one or more of the pension, profit-sharing, or annuity plans of the corporation on December 31, 1977. Within six months after the date of enactment, the author or artist must make an election to be considered as an employee of the corporation for purposes of chapters 21 (relating to FICA tax) and 24 (relating to Federal income tax withholding) of the Code.

The term "contract" is defined by the bill to include two types of arrangements. The first is a contract which during its term requires the author or artist to give the corporation first reading or first refusal on writings or drawings of specified types, and prohibits the author or artist from offering any such writing or drawing to any other publication unless it has been offered to, and rejected by, the corporation. The second type of contract is one which requires the author or artist to use his or her best efforts to produce work of specified types for the corporation.

A corporation, to which the bill would apply, is a corporation which, for at least 15 years prior to January 1, 1978, had in effect one or more pension, profit-sharing, and annuity plans. Each of these plans must have contained from its inception a definition of the term "employee" that included the category "authors and artists under contract." Each

also must have been determined by the Secretary of the Treasury to be a qualified plan.

The primary beneficiaries of this bill would be certain contributing authors and artists and the *New Yorker* magazine.

Effective date

The provisions of the bill would apply to taxable years ending after December 31, 1977.

Revenue effect

The revenue effect of the provisions of this bill is estimated to be negligible.

